

03/25/2020

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Fourth	<div style="border: 2px solid black; padding: 5px; text-align: center;"> FILED APR - 8 2020 <small>CLERK U.S. DISTRICT COURT NORFOLK, VA</small> </div>
Name (under which you were convicted): JASON SCOT WALKER		Docket or Case No.: 2:17-CR-107	
Place of Confinement: Allenwood-LOW		Prisoner No.: 91307-083	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Jason Scot Walker	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

600 Granby Street
Norfolk, VA 23510
Walter E. Hoffman United States Court House

(b) Criminal docket or case number (if you know): 2:17-CR-107

2. (a) Date of the judgment of conviction (if you know): N/A

(b) Date of sentencing: January 22, 2018

3. Length of sentence: 7-years

4. Nature of crime (all counts): (Count one) Criminal Information Charging conspiracy to Distribute with Intent to Distribute Cocaine and Heroin in violation of 21 U.S.C. 841(A)(1) and (B)(1)(C), and Count six 924(C) in furtherance of a drug trafficking crime.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

Guilty to Count One and Six (Listed Above)

Not Guilty 2,3,4, and 5

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

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8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: _____
(b) Docket or case number (if you know): _____
(c) Result: _____
(d) Date of result (if you know): _____
(e) Citation to the case (if you know): _____
(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
(2) Result: _____
(3) Date of result (if you know): _____
(4) Citation to the case (if you know): _____
(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: WALTER E. Hoffman United States Court House
(2) Docket or case number (if you know): DKT #43
(3) Date of filing (if you know): 3/19/20

- (4) Nature of the proceeding: 3582(c) Petition for Modification of Sentence
- (5) Grounds raised: Illegally charged pursuant to 924(c) element charge

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

- (7) Result: DENIED

- (8) Date of result (if you know): 3/19/2020

- (b) If you filed any second motion, petition, or application, give the same information:

- (1) Name of court: _____

- (2) Docket of case number (if you know): _____

- (3) Date of filing (if you know): _____

- (4) Nature of the proceeding: _____

- (5) Grounds raised: _____

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

- (7) Result: _____

- (8) Date of result (if you know): _____

- (c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

- (d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Petitioner now qualifies to have his 924(c)(1) violation
vacated and released from custody based on new case

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Petitioner 924(c) in furtherance of a drug trafficking crime cannot stand in light of new case laws; thus making him innocent of this charge or crime committed supposedly.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 3582(c)

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): #43

Date of the court's decision: 3-19-20

Result (attach a copy of the court's opinion or order, if available):

Not determined in the denial order.

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Ineffective Assistance of Counsel when failing to (counsel) appropriately explain the 924(c) element charge and plea allowed
~~6th Amendment violation.~~

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Defense Counsel failed by not providing proof that Petitioner could not have plead to a 924(c) element charge while in furtherance of a drug crime.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

-
- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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- (7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Failure by Counsel led to a violation of Petitioner's 5th Amendment substantive rights when allowing the Court to adopt an incorrect PSR report.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The Court adopted a PSR Report on information in the report that did not have "sufficient indicia of reliability" to support its probable accuracy.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: New case laws significantly changes Petitioner guideline range and must be correct in line with the natural sentencing disparity.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was illegally (harshly) sentenced above the appropriate sentencing guideline range; and should have only plead to a 24-month sentence as a matter of law.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds 1,2,3,4 because new case laws were not available at the time of sentencing.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial: NONE

(d) At sentencing:

(e) On appeal: Pro-Se

(f) In any post-conviction proceeding: Pro-Se

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Petitioner now challenges his crime/charges on new case laws not previously available; thus is why he missed the one-year statute of limitations.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

vacation of sentence and supervised release and immediate release from custody (time served...)

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on April 2, 2020
(month, date, year)

Executed (signed) on April 1, 2020 (date)

Jason Wan
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.